

§ 171.10

40 CFR Ch. I (7–1–11 Edition)

facility are subject to the same or equivalent provisions prescribed under § 171.7(b)(1)(iii) (A)–(E).

[40 FR 11704, Mar. 12, 1975]

§ 171.10 Certification of applicators on Indian Reservations.

This section applies to applicators on Indian Reservations.

(a) On Indian Reservations¹ not subject to State jurisdiction the appropriate Indian Governing Body² may choose to utilize the State certification program, with the concurrence of the State, or develop its own plan for certifying private and commercial applicators to use or supervise the use of restricted use pesticides.

(1) If the Indian Governing Body decides to utilize the State certification program, it should enter into a cooperative agreement with the State. This agreement should include matters concerning funding and proper authority for enforcement purposes. Such agreement and any amendments thereto shall be incorporated in the State plan, and forwarded to the Administrator for approval or disapproval.

(2) If the Indian Governing Body decides to develop its own certification plan, it shall be based on either Federal standards (§§ 171.1 through 171.8) or State standards for certification which have been accepted by EPA. Such a plan shall be submitted through the United States Department of the Interior to the EPA Administrator for approval.

(b) On Indian Reservations where the State has assumed jurisdiction under other Federal laws, anyone using or supervising the use of restricted use pesticides shall be certified under the appropriate State certification plan.

(c) Non-Indians applying restricted use pesticides on Indian Reservations not subject to State jurisdiction shall be certified either under a State cer-

tification plan accepted by the Indian Governing Body or under the Indian Reservation certification plan.

(d) Nothing in this section is intended either to confer or deny jurisdiction to the States over Indian Reservations not already conferred or denied under other laws or treaties.

[40 FR 11704, Mar. 12, 1975]

§ 171.11 Federal certification of pesticide applicators in States or on Indian Reservations where there is no approved State or Tribal certification plan in effect.

(a) *Applicability.* This section applies to persons in any State and on any Indian Reservation where, because there is no approved State or Tribal certification plan in effect, the Administrator implements an EPA plan for the Federal certification of applicators of restricted use pesticides.

(b) *Certification requirement.* In any State or on any Indian Reservation where this section is applicable, any person who uses or supervises the use of any pesticide classified for restricted use must be certified in accordance with this section. However, a competent person who is not certified may use a restricted use pesticide under the direct supervision of a certified applicator for uses authorized by the certified applicator's certification. Private applicator certification shall authorize only those uses, or the supervision of those uses, described in § 171.2(t). Commercial applicator certification shall authorize only those uses, or the supervision of those uses, included within the specific category(ies) or subcategory(ies), described in § 171.3(b) or an applicable Federal plan, in which the applicator is certified.

(c) *Certification of commercial applicators*—(1) *Categories for commercial applicators.* Categories referred to in this section are the same as those listed in § 171.3(b). Determination of competency in each category shall conform to the requirements of § 171.4(a).

(2) *Subcategories.* The Administrator may adopt subcategories as he or she deems necessary, consonant with the needs of the individual State or Reservation.

¹The term *Indian Reservation* means any federally-recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

²The term *Indian Governing Body* means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.